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DEC 16 2008

In re Application of	:	
Sadarangani et al.	:	
Application No.: 10/524388	:	DECISION ON
Filing or 371(c) Date: 09/07/2005	:	PETITION
Attorney Docket Number: 047935/288415	:	

This is a decision in response to the "Petition under 37 C.F.R. 1.181(a) to Withdraw Holding of Abandonment in Accordance with MPEP 711.03(c) and 1156 O.G. 53," filed November 10, 2008.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

**Background**

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 28, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). Accordingly, the date of abandonment of this application is May 29, 2008.

**Petition under 37 CFR 1.181**

Applicant files the present petition and asserts that the Office action was not received. In support of this assertion, Applicant files a copy of the Master Data Center database report indicating that nothing has been received from this Office for this application since the September 11, 2007 Office action; a copy of the outside front cover of the file jacket maintained by Applicant for the present application, and a copy of Applicant's docket control sheet for the present application. (Emphasis supplied).

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

MPEP 711.03(c).

Analysis

A review of the a copy of the Master Data Center database report and as confirmed in the petition, reveals that the copy of the Master Data Center database report is for the present application only. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all

replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, Applicant should so state.

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statements and/or copies of docket records and file jacket.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Director for Patents  
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                              Alexandria, VA 22313-1450

By FAX:                    (571) 273-8300  
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By hand:                   Customer Service Window  
                              Randolph Building  
                              401 Dulany Street  
                              Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/  
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